

**PROPOSED REGULATIONS UNDER THE MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011**

**AGENCY DISCLOSURE STATEMENT**

This Regulatory Impact Statement (RIS) was prepared jointly by Land Information New Zealand (LINZ) and the Office of Treaty Settlements (OTS). It provides an analysis of options for determining fees for services LINZ is required to deliver under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act). The fees will be set in regulations made under the Act.

The services provided by LINZ relate to a new regime under the Act for the granting of interests in reclaimed land formed from the common marine and coastal area. LINZ and the Minister of Land Information have new responsibilities to assess and determine applications relating to such interests.

Seven services provided by LINZ will be subject to fees. The key constraints on the analysis are that:

- LINZ is required to recover 100% of its costs; and
- one of the services has a valuation component that potentially varies significantly in cost between applications, making it necessary to identify an equitable way to set fees for this service (the costs to LINZ for the remaining services will not vary between applicants).

Two options considered for the valuation component involve setting a fixed fee based on an average cost of valuations. This proves problematic because of the limited amount and relevance of historical information on valuation costs from which future fees could be derived. LINZ has developed a new methodology for valuing the Crown's interest in reclaimed land under the Act that is intended to be more robust and transparent than the methodology used for historical reclamations so the costs of historical valuations are not directly comparable. Valuers have not yet worked with this new methodology and so it is difficult to anticipate future costs in order to set fixed fees.

The analysis has been informed by consultation with government and non-government stakeholders.

Kevin Kelly

**Acting Deputy Secretary and Director  
Office of Treaty Settlements**

Signature -----

Date -----

## BACKGROUND

1. The Act provides a new regime for the granting of interests in reclaimed land formed from the common marine and coastal area and gives LINZ new responsibilities for processing and determining applications. Prior to the Act's commencement, most applications for an interest in reclaimed land were processed by the Department of Conservation (DOC) under the Resource Management Act 1991 (RMA).
2. Sections 35(5) and 43(2) of the Act require applicants to pay fees for LINZ services to be set in regulations made under section 118(h)(i) of the Act. The fees are payable on application and are recoverable as a debt to the Crown.
3. Land may be reclaimed for a number of purposes including port company developments, airport runway extensions, marinas and other land uses. The Act allows applicants to seek interests ranging from freehold title to leases, licences or other rights to occupy or use the land.
4. Central and local government both have decision-making roles regarding reclaimed land. Regional councils consider the environmental effects and whether to grant a resource consent under the Resource Management Act 1991. The Minister for Land Information, on behalf of the Crown as owner of reclaimed land, decides whether to vest a legal interest in a reclamation in a person, and if so, the price to be paid for the grant of the interest. In general, only the developers of reclaimed land or a network utility operator may apply for an interest in reclaimed land.
5. Seven types of applications made to LINZ will be subject to fees (refer table in paragraph 15). The key decisions to be made by the Minister are:
  - a. Whether to grant an interest in reclaimed land to developers, and if so, what type of interest, the price<sup>1</sup>, and any conditions that should apply. Note that granting an interest does not amount to vesting the interest in the applicant. This determination may be made before a reclamation is completed to provide developers with greater investment certainty. It requires a land valuation to be obtained which involves consideration of matters such as the financial value of the land to the Crown, the public interest in the land, any cultural value to tangata whenua and whether there are existing Treaty claims.
  - b. Whether to legally vest in the applicant an interest in the reclaimed land. This decision is made after a reclamation is completed and involves consideration of matters such as whether the vesting is in accordance with the determination in (a) above and whether any conditions imposed when that determination was made have been complied with.
6. In cases where a customary marine title (CMT) group is the developer of reclaimed land in a CMT area, the presumption is that the CMT group is to be granted a freehold interest. The process for considering an application by a CMT group for an interest is similar in most respects to that for other developers except that the fixed

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<sup>1</sup> Customary marine title holders do not pay the Crown a consideration for the land.

base and variable valuation costs for CMT are likely to be lower, as the CMT group already holds customary title for the piece of land in question.

## **STATUS QUO**

7. LINZ has only two possible sources of funding to administer applications: third party fees and Crown funding. There is no available Crown funding to deliver reclamation-associated services and no fees have been set enabling the recovery of costs from applicants. The Act provides the power to set fees in regulations to recover LINZ costs.

## **OBJECTIVES AND PROBLEM DEFINITION**

8. Fees will need to be set order to allow the processing of applications. LINZ has six applications waiting to be processed and approximately four more are likely before the end of the year.
9. The policy objectives underpinning the setting of new fees are that they:
  - Need to fully recover all the costs to the Crown in delivering these services
  - Avoid cross-subsidisation or overcharging of applicants on an average cost basis
  - Provide applicants with certainty in the amount of fee payable
  - Minimise the cost of administering the fees.
10. The key policy problem that needs to be addressed by this analysis is how best to set a fee that fairly reflects the cost to LINZ of determining applications for the grant of an interest in reclaimed land especially where the cost of some parts of the application process are not easily known in advance.

## **REGULATORY IMPACT ANALYSIS**

11. Three options have been identified for fairly recovering the costs of these services overall. The difference between each of the options relates only to the way in which fees are derived for the valuation component of the work required to determine applications for the grant of an interest in reclaimed land (under sections 36 and 43(3) of the Act in the first and fifth lines in the table below). These determinations involve obtaining a valuation of the Crown's interest in the reclaimed land from suppliers outside LINZ. The cost of this work will vary according to the nature and complexity of the task. Accordingly, this variability in costs between applications needs to be accurately reflected in the fee framework.
12. Apart from applications for the grant of an interest in reclaimed land, good information is available on the number of hours that LINZ will take to complete the work and the cost of overheads for the other six application types. This is because the services are largely administrative in nature and are similar to other services already provided by LINZ or other departments.
13. Furthermore, the work required of LINZ to process these applications will not vary significantly between applicants, allowing fixed fees to be set for almost all of the application types.

14. Therefore, in all other respects, the fees in the preferred option table below apply to the alternative options.

***Preferred Option – Table of Fees (including variable charge for valuation service)***

15. The following table sets out the preferred option for a fees structure set in regulations. As indicated later in this statement, the main reason for this being the preferred option is the accuracy of cost recovery that it affords over the alternative options.

<b>Section</b>	<b>Fee</b>	
Sections 36 – Determination on granting an interest in reclaimed land	Fixed fee Variable fee for valuation services, based on an individualised quotation, to be advised to the applicant in advance and the applicant's agreement sought to proceed. <sup>2</sup>	\$3,100.00 Variable
Section 38 – Variation of determination requested by applicant	Fixed fee	\$570.00
Section 39 – Minister by notice in Gazette vests interest in reclaimed land	Fixed fee for Leases, licences, easements	\$2,140.00
	Fixed fee for Freehold Interests	\$2,840.00
Section 40 – Renewal of lesser interest in land	Fixed fee	\$1,360.00
Section 43(3) – Determination on application by CMT group for an interest in land reclaimed from the group's CMT area	Fixed fee Variable fee for valuation services, based on an individualised quotation, to be advised in advance to the applicant.	\$2245.00 Variable
Section 43(5) – Minister may vest interest in customary marine title group	Fixed fee for Leases, licences, easements	\$2,140.00
	Fixed fee for Freehold Interests	\$2,840.00
Section 44(3) – Determination that sale complies with provisions in Act relating to the Right of First Refusal	Fixed fee	\$280.00

<sup>2</sup> If the applicant does not agree with the quote the application will not proceed just as the application will not proceed if the applicant thinks the other fees are too high.

16. The fixed fees above have been calculated by adding costs that can be attributed directly to the service to an equitable share of LINZ's costs that are not attributable to any specific service, such as office space and capital depreciation costs. Allocating costs unable to be attributed to any one service equally across all transactions avoids bias and price discrimination so that users are treated fairly.
17. An exception to this fixed fee approach is made in relation to applications for the grant of an interest in reclaimed land under sections 36 and 43(3) of the Act. Here, a combination of a fixed base fee (to cover LINZ's administration costs) and a variable fee is proposed.
18. The variable fee relates to the cost of obtaining a valuation of the Crown's interest in the reclaimed land from an independent valuer. LINZ will maintain a list of preferred suppliers of valuations and applicants will be advised of the quoted price for their particular application. This option is recommended because, in relation to the valuation component, it:
  - provides transparency and certainty to prospective applicants of the fees they will need to pay;
  - directly aligns the fees with the actual costs of the work;
  - does not rely on the use of unreliable historical data relating to valuation costs (compared with Options 2 and 3);
  - completely aligns Crown expenditure with income; and
  - avoids inequities and cross subsidisation.
19. This option involves some additional administration costs (compared to Options 2 and 3). These costs are expected to be minimal, however.

***Alternative Option One – fixed fee for valuation service***

20. Under this option, a fixed fee of \$7100 would be charged to each applicant comprised of the \$3100 base fee as per the table and a fixed fee of \$4000 for the valuation. The valuation fee was based on limited figures available on the costs of past reclamation valuations undertaken by DOC, the costs of complex commercial valuations undertaken by LINZ for non-reclamation purposes and advice from the Valuer-General. It should be noted that the DOC valuations are not directly comparable because a different valuation methodology was used. As noted, LINZ has developed a new and more transparent methodology that valuers will have to follow for reclamations under the Act.
21. Commercial applications are expected to be more expensive to value than residential applications. There were no residential reclamation valuations carried out under the RMA.
22. This option provides certainty to applicants at the time they make an application and does not involve any associated administration costs. However it was discarded because:

- costs could not be determined with certainty because of the limited amount and poor reliability of data on the cost of past valuations undertaken by DOC (and lack of any data for residential applications);
- it would likely result in inequities through residential applicants cross-subsidising commercial applicants; and
- it would likely lead to some over or under-recovery for the Crown given the fees set in regulations may not accurately reflect the actual costs to LINZ (although this could be evened out in the short to medium term through memorandum account management and fee reviews).

***Alternative Option Two – two fixed fees for valuation services: one each for residential and commercial applications***

23. This option is a variation of alternative option one. Applicants would be charged a fixed base fee of \$3100 but the valuation fee for residential applications would be set significantly lower than that for commercial applications.

24. This option was also discarded. While it reduces inequity and cross-subsidisation between applicants, the potential for under or over recovery remains as for alternative option one, given the difficulty of setting fees that will align with actual costs.

**SUMMARY OF ANALYSIS**

<b>Objectives</b>	<b>Preferred Option</b>	<b>Alternative Option One</b>	<b>Alternative Option Two</b>
Full cost recovery from third party revenue	Yes	Some misalignment between costs and fees	Some misalignment between costs and fees
Avoid cross-subsidisation	Yes	No, some cross-subsidisation between applicants	No, some cross-subsidisation between applicants but less than Alternative Option One
Certainty for applicant in the amount payable	Not at the time an application is made (although over time LINZ may have sufficient cost information from previous valuations to provide an indicative cost at this stage). Applicants will have certainty once LINZ has supplied a quote from a registered valuer	Yes	Yes
Minimise costs of administering the fees	Costs are only minimally greater than for options one and two.	Yes	Yes

## **CONSULTATION**

25. A consultation paper setting out the table of fees proposed in Alternative Option One was sent in March 2012 to approximately 30 stakeholder organisations, including: Local Government New Zealand, regional councils, coastal district councils, relevant government departments, port companies and other key industry groups that commonly undertake reclamations, national professional groups involved with the design and planning of reclamations and national environmental and recreational non-government organisations.
26. Submissions were received from the Port CEO's group and the New Zealand Institute of Surveyors. Neither had adverse comment on the proposed fees.
27. In addition, the following government departments were consulted on the table of fees proposed in Alternative Option One in the development of draft policy proposals and this RIS: The Treasury, Ministry of Business, Innovation and Employment, DOC, Te Puni Kōkiri and the Department of Internal Affairs.
28. The Treasury was the only department to comment. The Preferred Option was developed to address Treasury's concern at the potential for inequities under Alternative Option One.
29. A further round of consultation on revised options, including the Preferred Option, was carried out in September 2012. Those consulted on the original discussion document were invited to comment on the revised options. LINZ also posted the consultation material on its website in an effort to reach more homeowners. No submissions were received.

## **IMPLEMENTATION**

30. It is proposed to implement the fees in December 2012 to enable LINZ to begin processing the applications it is already receiving under the Act. As noted, LINZ expects to have received up to 10 applications by then.

## **MONITORING, EVALUATION AND REVIEW**

31. Implementation of the regulations will be monitored by OTS as part of its responsibilities for monitoring implementation of the Act. LINZ will be the key source of information on the accuracy and effectiveness of the fees regime given its operational responsibilities under the Act. As noted above, fixed fees have been calculated based on information that is considered accurate and reliable. However, LINZ will closely monitor the fees gathered against costs in the first two years and make any recommendations to OTS for amendments to refine the fee structure.